

Central Administrative Tribunal
Ernakulam Bench.

Date of Decision: 16.11.1989.

P R E S E N T

Hon'ble Shri N.V. Krishnan, Administrative Member

And

Hon'ble Shri N. Dharmadan, Judicial Member

Original Application No. 13/87

1. P.K. George Panicker
2. M.K. Purushothama Kurup
3. K.G. Nanikutty

} : Applicants

Vs

1. Collector of Central Excise, Cochin
2. Central Board of Excise & Customs,
New Delhi, rep. by its Chairman.
3. Union of India, rep. by its
Secretary, Department of Revenue &
Insurance, New Delhi.
4. A.P. Davis, Inspector of Central Excise,
Divisional Preventive Ernakulam II Dn.,
Cochin - 18.
5. V. Gopalan Nair, Inspector of Central
Excise, Punalur Range, Punalur.

} Respondents

M/s DV Radhakrishnan, K. Radhamani Amma,) Counsel for
V.N. Shubangan & Raju K Mathew) Applicants

Mr. K. Karthikeya Panicker, ACGSC : Counsel for respondents

O R D E R

Shri N.V. Krishnan, Administrative Member

The applicants are aggrieved by the places assigned to them in the Seniority List as on 1.1.86 (Ext.A7), consequent upon certain directions given by Respondent-2 in his letter dated 12.7.85 (Ext.A8). The reasonableness of their grievance is appreciated by Respondent-2 him-

self who, in his letter dated 16.12.87 (Annexure-R1) to Respondent-1, states that the directions at Annexure-A8 have been wrongly interpreted. Nevertheless, it is stated that the first respondent is unable to give any relief in view of an earlier decision of the High Court of Kerala in another case and, therefore, it is contended that the applicants are not entitled to any relief even though this stand contradicts the Ext.R1 letter of Respondent-2. Hence the case is before us for finding a solution.

2. The facts of the case may be briefly noted.

2.1 The post of Inspector of Central Excise used to be filled up from three sources, namely, (i) by promotion from the post of Sub Inspectors, (ii) by promotion of ministerial employees and (iii) by direct recruitment.

By the order dated 6.12.65 (Annexure-A2), the Central Board of Excise and Customs (R-2) had decided that the appointments in the above order should be made on the basis of a roster in the ratio of 2:1:1 respectively, which determines the inter se seniority also.

2.2 This practice continued till 1972 when the Respondent-3 issued a memorandum dated 22.7.82 (Ext.A3). A decision was taken that the entire cadre of Sub Inspectors

U

of Excise should be abolished and should be replaced by permanent posts of Inspectors of Excise. Therefore, 664 posts of Inspectors were created for this purpose. All Sub Inspectors of Excise, irrespective of their length of service, who were found fit, were appointed as Inspectors of Excise, in relaxation of the provision of the normal Recruitment Rules relating to minimum length of service etc. The number of upgraded posts of Inspector allocated to the Cochin Collectorate is twenty-five according to the applicants and twenty one according to the Respondents 1 to 3.

referred to above
2.3 Ext.A3 memo/specifically gives directions in the name of the President of India regarding the manner in which promotions are to be made and inter se seniority fixed. These are summarised below:-

(i) Posts of Inspectors, Central Excise vacant as on 31.7.82: These posts are to be filled up in accordance with the procedure in vogue before Ex.A3 order was issued. In other words, this will be governed by the directions relating to the quota fixed for each (ie, 2:1:1) source of recruitment/by the Ex.A2 order dated 6.12.65

vide para 2.1 supra. All such persons will rank en bloc senior to those appointed to the posts referred to in sub paras (ii) and (iii) below.

(ii) 664 upgraded posts of Inspectors: All these posts (21 have been allotted to Cochin Collectorate) are to be filled up only by promotion of Sub Inspectors of Excise found fit for promotion. They will rank en bloc below those appointed to posts referred to in sub para (i) above, but above those appointed to posts referred to in sub para (iii) below.

(iii) Vacancies that arise on or after 1.8.72: The cadre of Sub Inspectors having been abolished, these posts will be filled up by direct recruits and promotion of ministerial officers in the ratio of 3:1. The same ratio will also apply to vacancies reserved for Sub Inspectors ^{sub para} under/(i) above, but remaining unfilled on any ground. The appointees under this sub para will rank below the Inspectors promoted to the posts referred to in para under (ii) above.

2.4 In regard to the vacancies as on 31.7.72, it is stated in the application as follows:-

"There were 13 vacancies of Inspectors of Central

Excise remained to be filled up prior to 31.7.1972 applying the ratio of 1:1 between promotee from Ministerial grade and direct recruit after the en bloc promotion of Sub Inspectors against the posts of Inspectors of Central Excise created by the upgradation of Sub Inspectors. Those vacancies were filled up in May, 1973 by promoting 7 U.D. Clerks and appointing 6 direct recruits."

This has generally been corroborated by the Respondents, who have stated as follows in para 3 of their reply:-

"and it was observed that all the Sub Inspectors had been promoted against the vacancies covered by the upgradation of Sub Inspector post and the remaining vacancies as on 31.7.72 in the promotion quota and Direct Recruitment Quota should have been filled in the ratio 1:1 ie, one ministerial promotee and one direct recruit, and hence the seniority of ministerial promotee and direct recruit appointed after 1.8.72 but against vacancies existed prior to 1.8.72 had to be fixed in the ratio 1:1."

2.5 The applicants state that their seniority vis-a-vis

Respondents 4 & 5 as well as the ministerial employees

and the direct recruits promoted or appointed to the

vacancies as on 31.7.72 has been correctly fixed as on

1.1.83 by the Seniority List at Annexure-5. In this

connection, they have stated as follows in their appli-

cation:-

"Subsequently, a provisional seniority list in respect of Inspector of Central Excise (O.G.) of the Cochin Collectorate as on 1.1.1983 was prepared and published as per proceedings C.No.11/34/2/82-Estt/IV dated 25.2.1984 of the 1st Respondent. In the above proceedings, in para 2(iv), it has been clearly stated that the seniority in respect of the promotees and direct recruits, who are appointed against vacancies which has arisen prior to 31.7.72, were fixed below the upgraded Sub Inspectors as per the Board's order F.No. A-23011/9(c)/70.Ad.III dated 5.2.1977 and the rotation of vacancies in the ratio of 1:1 was applied in their case in the light of the orders which were in existence prior to the

u

upgradation of Sub Inspector posts in 1972. The applicants state that the last Sub Inspector promotee to the upgraded post of Inspector of Central Excise (O.G.) is K.K. Shivaji who is placed at Sl.No.131 in the above provisional seniority list. Sl. Nos. 132 to 144 are given seniority and rank according to the rota and quota of 1:1. Sl.Nos.145 onwards are given placements applying the ratio of 3:1. A true copy of the above proceedings dated 25.2.1984 with annexure, to the provisional seniority list of Inspectors (O.G.) as on 1.1.1983 is produced herewith and marked as Exhibit-A5. In the Ext.A5 provisional seniority list, the applicants 1 to 3 are given rank and seniority at Sl.Nos. 224, 208 and 204 respectively and respondents 4 and 5 were placed at 149 and 239 respectively."

2.6 Their grievance is that this relative seniority position was upset in a subsequent seniority list (Annexure-A7) as on 1.1.86, mainly due to the fact that the principles for determining the seniority of persons appointed to the vacancies as on 31.7.72 were changed in the light of Ext.A8 instructions. The applicants have stated in this connection as follows:-

"However, another seniority list of Inspectors of Central Excise (O.G.) as on 1.1.86 has been issued and circulated among the staff under letter C.No.II/34/4/86-Estt.I dated 10.6.1986 completely unsettling the settled seniority position obtained hitherto. A true copy of the above letter dated 10.6.1986 with an extract of the seniority list of Inspector of Central Excise (O.G.) as on 1.1.1986 is produced herewith and marked as Exhibit-A7. In Ext.A7 it has been stated that the seniority of Inspectors who had been appointed against the vacancies which had arisen prior to 1.8.1972 in the promotion quota and direct recruitment quota fixed in the ratio of one promotee and one direct recruit in the seniority list as on 1.1.1984 has now been revised in the ratio of 3 direct recruit and one promotee as per Board's clarification F.No.8.12014/2/84-Ad.III.A dated 12.7.1985. Accordingly, the applicants 1 to 3 are brought down in seniority and rank at Sl. Nos.144, 128 and 124 respectively. Persons like respondents 4 & 5 have been given higher placements and respondents 4 and 5 have been placed at Sl.Nos. 48 and 134 respectively." (emphasis ours)

2.7 The relative position of the applicants and others

u

concerned in the seniority list as on 1.1.83 (Annexure-A5) and as on 1.1.86 (Annexure-A7) can be better understood from the

following table:-

Following table:-

Seniority as on 1.1.83 (Annexure-A5)			Seniority as on 1.1.86 = (Annexure-A7)		
Sl.No.	Name	Sl.No. in the Seniority List	Sl.No.	Name	Sl.No. in the Seniority List
1.	V Mahadeva Iyer (P)	132	1.	R Ajit Kumar (DR)	36
2.	R Ajit Kumar (DR)	133	2.	Ranjit Jacob Koshy (DR)	37
3.	MM Eapen (P)	134	3.	KM Edison (DR)	38
4.	Ranjit Jacob Koshy (DR)	135	4.	V. Mahadeva Iyer (P)	39
5.	P Radhakrishnan (P) No. II	136	5.	KE Jose (DR)	40
6.	KM Edison (DR)	137	6.	PA Gangadharan (DR)	41
7.	PV Chandrasekharan Nair (P)	138	7.	TK Vasudevan (DR)	42
8.	KE Jose (DR)	139	8.	MM Eapen (P)	43
9.	K Kumaran No.1 (P)	140	9.	Ninan Thomas (DR)	44
10.	A.P. Davis (DR)	149	10.	A Radhakrishna Marar (DR)	45
11.	KG Nanikutty (P)	204	11.	S Madhavan (DR)	46
12.	MK Purushothama Kurup (P)	208	12.	P Radhakrishnan (2) (P)	47
13.	PK George Panicker (P)	224	13.	AP Davis (DR)	48
14.	V. Gopalan Nair (DR)	239	14.	MK Gopinath (DR)	49
			15.	M Abdul Salam (DR)	50
			16.	PV Chandrasekharan Nair (P)	51
			17.	S. Sivadasan (DR)	52
			18.	K. Kumaran No.1 (P)	53
			19.	KG Nanikutty (P)	124
			20.	MK Purushothama Kurup (P)	128
			21.	V. Gopalan Nair (DR)	134
			22.	PK George Panicker (P)	144

N.B.:

- (i) P= Promoted employee
- (ii) DR = Direct Recruit

It is clear that, whereas, as on 1.1.83, the senior most of the three applicants, KG Nanikutty, was 72 places below the first

person to be appointed against the vacancy as on 31.7.72 (V. Mahadeva Iyer), the position has changed as on 1.1.86. For, now Nanikutty is 88 places below Ajit Kumar shown as the first direct recruit to a vacancy as on 31.7.72. Thus, it is clearly established that by changing the principles relating to the fixation of seniority of persons appointed to vacancies as on 31.7.72, on the basis of the Ex.A-8 letter, the three applicants have been adversely affected.

2.8 The representations made by the first and third applicants (Annexure 9 and 11) in this regard have been rejected by the letter dated 21.10.86 of Respondent-1 (Ext.A-12). The applicants have, therefore, prayed that the Ext.A-7 seniority list, ^{as on 1.1.86,} the letter of Ex.A-8 occasioning the revision of the seniority list and the A-12 orders rejecting the representations be quashed. They have also prayed to direct the Respondents to restore the seniority and rank of the applicants as shown in the seniority list as on 1.1.83 at Ext.A-5. They have also prayed that the promotions to the higher cadre of Superintendent of Central Excise be made on the basis of the seniority list (Ext.A5).

3. A counter affidavit has been filed on behalf of the Respondents. Adverting to the instruction at Ex.A-8, it is

ll

stated in para 4 of their reply as follows:-

"On the basis of the above instructions, the seniority of all Inspectors appointed on or after 1.8.72 against vacancies existed prior to 1.8.72 and fixed in the ratio 1:1 ie, one promotee and one Direct Recruit was re-determined applying the ratio 3 Direct Recruit:1 Promotee and communicated in the seniority list issued as on 1.1.86. Consequently, the applicants had to be brought down in the seniority list as on 1.1.86."

(emphasis ours)

They have also exhibited a letter dated 16th December,

87 (Annexure-R1) from the second respondent to the first

respondent. Paras 2 to 4 of that letter read as follows:-

2. The clarifications given in Board's letter F.No.8-12014/2/84-Ad.III-A(II) dated 12.7.85 that the seniority of Inspectors (O.G.) appointed on or after 1.8.72 is to be determined in the ratio of 3:1 was, in fact, in respect of vacancies arising after 1.8.72. The intention was not to apply this ratio in respect of vacancies which had arisen prior to 31.7.1972 as the vacancies in existence on that date were to be filled up as per para 2(ii) of the Ministry's letter dated 22.7.72 as explained in para 1 above. (emphasis ours)

3. In the case of Shri KC Vijayan, Inspector promoted against the upgraded post of Sub Inspector, the Kerala High Court had ruled that certain Inspectors promoted from the ministerial grades should not have been assigned seniority above Shri Vijayan as they were not even eligible for appointment in the grade of Inspector for not having rendered the minimum qualifying service in order to be eligible for promotion to the grade of Inspector on the date Shri Vijayan was appointed against the post of Inspector. The Kerala High Court had held that the promotion of these ministerial officers had they been assigned any notional date at the time of promotion."

4. You are requested to modify the counter affidavit in consultation with the Branch Secretariat of the Law Ministry at Madras before filing it. This is necessary because Board's orders have not been correctly interpreted in the counter affidavit and in the preparation of even correct seniority list of Inspectors. (emphasis ours)

The Respondent 2 has further clarified in his letter dated

26.5.88 to Respondent-1 (Ex.R-4) the legal position.

4. We have heard the counsel on both sides and perused the records. It is clear that the second respondent whose earlier clarification dated 12.7.85 (Ann.A-5) had resulted in the issue of the impugned seniority list as on 1.1.86 at Annexure-A7, has himself now clearly stated that his clarification has been misunderstood. It is reiterated that in respect of the vacancies that existed as on 31.7.72, the ratio should be 1:1 as between the promotees from the ministerial cadre and the direct recruits, irrespective of when the promotion was made. Thus, the applicants' complaint that they have been given lower places in the seniority list on 1.1.86 is admitted.

5. Nevertheless, two points have been made in the counter affidavit and these were stressed by the learned Additional Central Govt. Standing Counsel during arguments. These can be considered straightaway.

6. The first is that one ministerial employee and some direct recruits, who were promoted/appointed to the vacancies existing as on 31.7.72, have filed Writ Petitions No.3316 of 1984 and OP 87/85 respectively in the High Court of Kerala, against their being placed below the Sub Inspec-

tors who were promoted to the upgraded posts of Inspectors contrary to the directions in Ex.A-3. It is stated that the two Writ Petitions have been transferred to this Tribunal and are pending as TA 383/86 and TA 769/86.

7. We checked the present position in regard to the two Transferred Applications referred to above. Though they were stated to be pending by the learned counsel for the Respondents 1 to 3, it is seen that they have been disposed of a few months back.

8. TA 383/86 was filed by V. Mahadeva Iyer, ie, the 1st UDC promoted to a vacancy of Inspector of Excise which existed on 31.7.72. The challenge in that case was in respect of various seniority lists, the last of which was the provisional seniority list of Inspectors as on 1.1.83 (ie, Annexure-5 in the present case). That is not the issue that is raised in the application before us where the challenge is to the provisional seniority list as on, 1.1.86. An order was passed on 25th May, 1989 ex-parte dismissing his application.

9. TA 769/86 was filed by seven Direct Recruits, including

AP Davis, the Respondent-4 in the present case. That application was filed against the seniority lists of Inspectors as on 1.1.83 (ie, Ex.A-5 in the present case) and is, therefore, different from the present case. That application was disposed of by an order dated 3.2.89. The application was dismissed on the ground that the challenge was only to the provisional seniority list which had not yet become final. The Respondents were, therefore, directed to finalise the seniority list within a period of 4 months from the date of receipt of the order.

10. The second difficulty concerns Respondent-1 and is stated to stand in the way of his giving any relief to the applicants. This is the judgment dated 20th March, 78 of the High Court of Kerala in OP 4489/1977 filed by KC Vijayan, Inspector of Central Excise, to which a reference has been made by R-2 in para 4 of the extracts reproduced in para 3 supra. In the counter affidavit it is contended that R-1 feels constrained from implementing the clarifications given by R-2 in his letters dated 16.12.87 (Ext.R1) and dated 26.5.88 (Ext.R4), because of this judgment and the judgment in Writ Appeal 144 and 145/79.

11. We have carefully studied the judgment of the High Court of Kerala in the Writ Petition filed by Shri KC Vijayan (Annexure-R2) as well as the subsequent judgment of the same court in Writ Appeal No.144 & 145/79 (Ext.R3). The matter dealt with in Ext. R2 judgment is related to promotions ordered in 1970. At that time also, 977 posts of Sub Inspectors of Excise were upgraded to that of Inspectors of Central Excise and they were to be filled up by promotion of Sub Inspectors only. There were also at that time, certain normal vacancies of Inspectors to which ministerial staff could be promoted in the ratio mentioned in para 2.1 supra. The private Respondents in that petition were ministerial staff promoted as Inspectors of Central Excise to normal vacancies which existed at the time of the aforesaid mass upgradation of posts of Sub Inspectors. They were all promoted from dates later to the date on which the petitioner, a Sub Inspector, was promoted to one of the upgraded posts. Yet, these private Respondents were given seniority over the petitioner by assigning them a notional date for purposes of seniority. The High Court of Kerala allowed the petition and the impugned seniority list was quashed. It was

noted that the ministerial employees were not even qualified to be promoted from the date the vacancies arose.

They acquired this qualification later. Hence, they could not be promoted retrospectively. They made the following observations in this regard:-

"Though the Central Government Pleader submitted that what has been sought to be done in Ext.P-6 and P-7 is only to do justice between UD Promotees and Sub Inspector promotees in as much as the vacancies for the promotion of the Upper Division Clerks which arose could not be filled up for a long time, and it was only to remove the practical difficulties and resultant hardship that the idea of assigning notional dates of promotion to be assigned to the UD Promotees was conceived. Whatever that might be in the light of the dictum laid down by the Supreme Court and the Division Bench of this Court, I do not think that there is any justification for assigning notional dates of promotions to those persons whose appointment is made neither retrospectively nor with a notional date assigned as the effective date of promotion, deviating from the usual procedure governing seniority."

This judgment was upheld in the Writ Appeal also.

12. It is clear that the question involved in Vijayan's case decided by the Ex.R2 & Ex.R3 judgments was totally different. That case raised the issue whether the Sub Inspectors promoted en masse to the upgraded posts can be treated junior to ministerial employee promoted as Inspectors. That is not the question that is raised in the present case.

13. We, therefore, note that there is no disagreement between the applicants and Respondent-2, who is the Head

of the Department where the applicants work, that on the facts of this case, the promotion to the posts of Inspectors to the vacancies which existed on or before 31.7.72, irrespective of the dates on which they were made, should be in the ratio of 1:1 as between persons promoted from the ministerial cadre and direct recruits and that it is on this basis alone that their seniority has to be fixed. The seniority cannot be fixed on the basis of 3 Direct Recruits to 1 Promotee as has been done in Annexure-7. Therefore, the Annexure-7 seniority list needs to be modified.

14. The question that arises^{is} is what relief can be given to the applicants. We notice that if the application is allowed, it will involve a revision of the seniority list (Annexure-7) which will adversely affect many persons who have not been impleaded in this application. In fact, considering the nature of the relief sought in this application, the applicants themselves should have anticipated this consequence and taken appropriate steps to implead one or two Inspectors^a in ~~the~~ representative capacity to represent all others

l
comes
who may have been adversely affected by the grant of the relief sought by them in this application. That has not been done. We have, therefore, framed the relief keeping this circumstance in view. We note that Inspectors upto and including Sl.No.35(KK Sivaji) in the impugned seniority list A-7 will not be affected by granting relief as prayed for in this application, as the applicants have no grievance against the seniority assigned to them. But others in the list would be affected. Having regard to the facts and circumstances of this case, the interest of justice would be served only if we allow the application making sufficient provision for safeguarding the interest of persons who are not parties in this proceedings but at the same time are adversely affected by the grant of the reliefs to the applicants. Accordingly, we allow the application with the following safeguards.

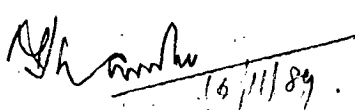
15. We direct the 1st Respondent to prepare a fresh seniority list of Inspectors (Ordinary Grade) as on 1.1.86 by revising the Annexure-7 Seniority List, after issuing notice to all persons in the list likely to be affected and affording *an* ~~an~~ opportunity of being

l

heard to such of those persons who, after receipt of [&] such notice, request for the same and refix the seniority of the ministerial employees promoted as Inspectors to the vacancies which existed on or before 31.7.72, irrespective of the dates on which they were promoted, in the light of the observations made in this judgment. It needs no mention that they are entitled to consequential benefits also.

16. The application is allowed with the directions as given above.

17. There will be no order as to costs.


(N. Dharmadan)
Judicial Member


(N.V. Krishnan)
Administrative Member

16th day of Nov., 1989.